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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DONALD J. TRUMP,

Plaintiff,

v.

RON BAKER, ELLIOT KRAMER,
TRUMP'S BEST COFFEE, GLOBLE
VIVA, INC.

Defendants.

C07 00378 SI

**COMPLAINT FOR TRADEMARK
INFRINGEMENT**

DEMAND FOR JURY TRIAL

COMPLAINT

1 Plaintiff Donald J. Trump, by his attorneys Proskauer Rose LLP, brings this
2 action for trademark infringement, unfair competition, and violation of right of
3 publicity against Defendants Ron Baker, Elliot Kramer, Trump's Best Coffee, and
4 Globle Viva, Inc. (collectively, "Defendants"):

5
6 **Parties**

7 1. Plaintiff Donald J. Trump is an individual residing in New York, New
8 York. Mr. Trump is a world famous real estate developer and business executive.
9 He is also the star of the hit television show *The Apprentice*.

10 2. On information and belief, Defendant Ron Baker is an individual
11 residing in San Francisco, California.

12 3. On information and belief, Defendant Elliot Kramer is an individual
13 residing in San Francisco, California.

14 4. On information and belief, Defendant Trump's Best Coffee is an
15 unregistered d/b/a of Defendants Baker and Kramer, with an address of 4300 Geary
16 Boulevard, San Francisco, CA 94118.

17 5. On information and belief, Defendant Globle Viva, Inc. is a California
18 corporation with an address of 4300 Geary Boulevard, San Francisco, CA 94118.

19 **Jurisdiction and Venue**

20 6. This Court has subject matter jurisdiction over this Complaint pursuant
21 to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338, because the action arises
22 under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and pursuant to the supplemental
23 jurisdiction provisions contained in 28 U.S.C. § 1367.

24 7. This Court has personal jurisdiction over Defendants because
25 Defendants reside in and do business in this judicial district.

26 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
27 and (c) because a substantial part of the events giving rise to Plaintiff's claims
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1 occurred in this judicial district, and Defendants are subject to personal jurisdiction
2 in this judicial district.

3
4 **Intradistrict Assignment**

5 9. Pursuant to Local Civil Rule 3-2(c), this case is subject to district-wide
6 assignment because it involves intellectual property claims.

7 **Facts Common To All Counts**

8 10. Mr. Trump is a world famous real estate developer and business
9 executive. He is famous for his endeavors not only in real estate, but in sports,
10 gaming, entertainment, and recreation. He is also the author of seven bestselling
11 books. Since early 2004, Mr. Trump has starred in and executive produced the hit
12 television show *The Apprentice*, which, due to its nationwide audience and high
13 ratings, has raised Mr. Trump's profile even further.

14 11. Mr. Trump is the owner of U.S. Trademark Registration No. 2,226,174
15 for TRUMP INTERNATIONAL HOTEL & TOWER for, *inter alia*, "hotel services
16 and restaurant services", U.S. Reg. No. 2,269,568 for TRUMP NATIONAL GOLF
17 CLUB for, *inter alia*, "social club and restaurant services", U.S. Reg. No. 2,577,243
18 for TRUMP PLAZA for "hotel, bar, and restaurant services", U.S. Reg. No.
19 2,240,310 for TRUMP for hotel services, and U.S. Reg. No. 2,413,984 for TRUMP
20 for spring water. U.S. Reg. Nos. 2,226,174, 2,240,310, 2,413,984, and 2,269,568
21 have obtained incontestable status.

22 12. Mr. Trump is continually expanding his business endeavors. Trump
23 Magazine, launched in 2004, is a quarterly magazine about business deals, travel,
24 golf, nightlife, fine dining, luxury goods, fashions, gaming, libations, cigars, and
25 other business and lifestyle related topics. In 2005, Mr. Trump launched Trump
26 University and the Trump Institute, which provide business instruction. In 2006,
27 Mr. Trump launched GoTrump.com, an online full-service travel agency.
28

1 Mr. Trump also licenses menswear fashions and accessories under the TRUMP
2 name.

3 13. As a result of Mr. Trump's decades-long real estate and business
4 activities, as well as his more recent business and entertainment expansions,
5 Mr. Trump's name has developed significant goodwill and trademark significance.
6 The public has come to associate the name TRUMP exclusively with Mr. Trump.

7 14. During June of 2006, Defendants launched the web site
8 TRUMPSBESTCOFFEE.COM. The website is an elaborate display of "coffee
9 houses / business centers." The site claims that TRUMP'S BEST COFFEE is a
10 proposed franchise of coffee houses that will be "designed to encourage business
11 meetings with WI-FI access, fax and copy machines, business journals and
12 newspapers, live working stock market ticker, business educational books, CD's
13 [sic], and software."

14 15. Defendants have not even attempted to disguise their attempt to
15 associate their endeavor with Mr. Trump. On Defendants' web site, in reference to
16 Defendant Ron Baker, it states "After attending the Trump Institute Seminars, he
17 was impressed with Donald Trump's hand picked world class experts. At the
18 Institute, Ron was inspired to create Trump's Best Coffee. Not wasting any time
19 and while at the Trump Institute weekend, Ron was able to identify certain
20 individuals and later assemble a team of professionals who wanted to work together
21 for the goal of creating the Trump's Best Coffee Franchise."

22 16. Defendant Baker also has stated that he plans to expand the franchise
23 into the Los Angeles, California area, and stated that he hoped to utilize the filming
24 of Season Six of *The Apprentice* in Los Angeles to promote the TRUMP'S BEST
25 COFFEE franchise in the Los Angeles area.

26 17. Before being contacted by counsel for Mr. Trump, Defendants' web
27 site further stated: "With the immediate recognition of the Donald Trump name . . .
28

1 we will get the attention of the general public.” After Mr. Trump’s counsel
2 contacted Defendants, Defendants changed this sentence to state: “With the
3 immediate recognition of the name Trump’s Best Coffee . . . we will get the
4 attention of the general public.” The intention remains clear.

5 18. In response to demands from Mr. Trump’s counsel, Defendants have
6 refused to discontinue the TRUMP’S BEST COFFEE proposed franchise or take
7 down the web site.

8 19. Everything about the overall look and feel of the TRUMP’S BEST
9 COFFEE web site is designed to make consumers (and potential franchisees)
10 believe that the venture is associated with Mr. Trump.

11 20. On or about June 26, 2006, Defendant Globle Viva, Inc. filed U.S.
12 Trademark application Serial No. 78/917,348 for the mark TRUMP’S BEST
13 COFFEE for “coffee-house and snack bar services.”

14 21. On December 6, 2006, the United States Patent and Trademark Office
15 issued an initial rejection of Defendants’ trademark application, the reason being a
16 likelihood of confusion with U.S. Reg. No. 2,226,174 (for TRUMP
17 INTERNATIONAL HOTEL & TOWER for, *inter alia*, “hotel services and
18 restaurant services”), U.S. Reg. No. 2,269,568 (for TRUMP NATIONAL GOLF
19 CLUB for, *inter alia*, “social club and restaurant services”), and U.S. Reg. No.
20 2,577,243 (for TRUMP PLAZA for “hotel, bar, and restaurant services”), all owned
21 by Mr. Trump. The Trademark Office noted that “the only difference between
22 [Defendants’ mark and Mr. Trump’s marks] is applicant’s substitution of
23 descriptive/disclaimed wording with its own descriptive wording.”

24 **COUNT I – TRADEMARK INFRINGEMENT**

25 **PURSUANT TO 15 U.S.C. § 1114**

26 22. Plaintiff repeats and realleges every allegation contained in paragraphs
27 1 – 21 as though fully set forth herein.
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1 23. Mr. Trump is the owner of U.S. Reg. Nos. 2,226,174, 2,269,568, and
2 2,577,243 for TRUMP-formative marks covering restaurant services, U.S. Reg. No.
3 2,240,310 for the mark TRUMP for hotel services, and U.S. Reg. No. 2,413,984 for
4 TRUMP for spring water.

5 24. Defendants have, without Mr. Trump's consent, used the mark TRUMP
6 in connection with the promotion of a business of coffee bars and business centers in
7 a manner that renders the mark substantially and confusingly similar to Mr. Trump's
8 various TRUMP trademarks.

9 25. The foregoing acts of Defendants constitute trademark infringement in
10 violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

11 26. Defendants' actions are likely to cause confusion or cause mistake, or
12 to deceive the relevant consuming public.

13 27. Mr. Trump has suffered, is suffering, and will continue to suffer
14 irreparable injury for which he has no adequate remedy at law. Mr. Trump is
15 therefore entitled to an immediate and permanent injunction against further
16 infringing conduct by Defendants.

17 28. On information and belief, Defendants have profited and are profiting
18 from such infringement and Mr. Trump has been and is being damaged by such
19 infringement. Mr. Trump is therefore entitled to recover damages and/or profits
20 from Defendants in an amount to be proved at trial as a consequence of Defendants'
21 infringing activities.

22 29. Defendants' infringing conduct has been willful, wanton, and
23 malicious, and done with an intent to deceive. Mr. Trump is therefore entitled to an
24 award of his reasonable attorneys' fees and costs, profits, and treble his actual
25 damages pursuant to 15 U.S.C. § 1117(a). Mr. Trump is also entitled to, among
26 other things, the cost of corrective advertising.

COUNT II – UNFAIR COMPETITION

15 U.S.C. § 1125(A)

30. Plaintiff repeats and realleges every allegation contained in paragraphs 1 – 29 as though fully set forth herein.

31. Defendants' acts as alleged herein also constitute false designation of origin, unfair competition, and false advertising in violation of Lanham Act Section 43(a), 15 U.S.C. § 1125(a).

32. Mr. Trump has suffered, is suffering, and will continue to suffer irreparable injury for which he has no adequate remedy at law. Mr. Trump is therefore entitled to an immediate and permanent injunction against further infringing conduct by Defendants.

33. Defendants have profited and are profiting from such infringement and Mr. Trump has been and is being damaged by such infringement. Mr. Trump is therefore entitled to recover damages from Defendants in an amount to be proved at trial as a consequence of Defendants' infringing activities.

34. Defendants' infringing conduct has been willful, wanton, and malicious, and done with an intent to deceive. Mr. Trump is therefore entitled to an award of his reasonable attorneys' fees and costs, profits, and treble his actual damages, pursuant to 15 U.S.C. § 1117(a). Mr. Trump is also entitled to, among other things, the cost of corrective advertising.

COUNT III – FEDERAL TRADEMARK DILUTION

15 U.S.C. § 1125(C)

35. Plaintiff repeats and realleges every allegation contained in paragraphs 1 – 34 as though fully set forth herein.

36. Defendants' acts as alleged herein are likely to dilute the distinctive qualities of the famous TRUMP trademark and constitute trademark dilution in violation of Lanham Act Section 43(a), 15 U.S.C. § 1125(c).

1 37. Mr. Trump has suffered, is suffering, and will continue to suffer
2 irreparable injury for which he has no adequate remedy at law. Mr. Trump is
3 therefore entitled to an immediate and permanent injunction against further
4 infringing conduct by Defendants.

5 38. Defendants have profited and are profiting from such dilution and
6 Mr. Trump has been and is being damaged by such dilution. Mr. Trump is therefore
7 entitled to recover damages from Defendants in an amount to be proved at trial as a
8 consequence of Defendants' activities.

9 39. Defendants' conduct has been willful, wanton, and malicious.
10 Mr. Trump is therefore entitled to an award of his reasonable attorneys' fees and
11 costs, profits, and treble his actual damages, pursuant to 15 U.S.C. § 1117(a).

12 COUNT IV – CYBERSQUATTING

13 15 U.S.C. § 1125(D)

14 40. Plaintiff repeats and realleges every allegation contained in paragraphs
15 1 – 39 as though fully set forth herein.

16 41. By registering the domain name www.TrumpsBestCoffee.com and
17 using that domain name in the manner set forth herein, Defendants have violated the
18 federal AntiCybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

19 42. Mr. Trump has suffered, is suffering, and will continue to suffer
20 irreparable injury for which he has no adequate remedy at law. Mr. Trump is
21 therefore entitled to an order directing that the domain name be transferred to him.

22 43. Defendants have profited and are profiting from such violation of the
23 federal AntiCybersquatting Consumer Protection Act and Mr. Trump has been and
24 is being damaged by such violation. Mr. Trump is therefore entitled to recover
25 damages from Defendants in an amount to be proved at trial as a consequence of
26 Defendants' infringing activities.
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1 44. Defendants' infringing conduct has been willful, wanton, and
 2 malicious, and done with an intent to deceive and a bad faith intent to profit.
 3 Mr. Trump is therefore entitled to an award of his reasonable attorneys' fees and
 4 costs, profits, and treble his actual damages, pursuant to 15 U.S.C. § 1117(a).
 5 Mr. Trump is also entitled to, among other things, the cost of corrective advertising.

6 45. Mr. Trump is also entitled to, among other things, and if he so elects
 7 before final judgment, statutory damages of up to \$100,000 pursuant to 15 U.S.C.
 8 § 1117(e).

9 **COUNT V – TRADEMARK INFRINGEMENT UNDER STATE LAW**
 10 **(CALIFORNIA BUS. & PROF. CODE § 14320)**

11 46. Plaintiff repeats and realleges every allegation contained in paragraphs
 12 1 – 45 as though fully set forth herein.

13 47. By the acts set forth above, Defendants have infringed and continue to
 14 infringe Mr. Trump's rights regarding his federal trademark registrations, in
 15 violation of California Business and Professions Code §§ 14320 and 14330.
 16 Defendants' conduct is likely to cause confusion, mistake, and deception among the
 17 general purchasing public, and to interfere with Mr. Trump's ability to use his mark
 18 to indicate a single quality control source of goods and services.

19 48. Mr. Trump has suffered, and is suffering, and will continue to suffer
 20 irreparable injury for which he has no adequate remedy at law. Mr. Trump is
 21 therefore entitled to an immediate and permanent injunction against further
 22 infringing conduct by Defendants.

23 **COUNT VI – TRADEMARK INFRINGEMENT UNDER STATE LAW**
 24 **(CALIFORNIA COMMON LAW)**

25 49. Plaintiff repeats and realleges every allegation contained in paragraphs
 26 1 – 48 as though fully set forth herein.

1 50. Defendants' acts as alleged herein are likely to cause confusion,
2 mistake, and deception among consumers as to the affiliation, connection, or
3 association of Defendants with Mr. Trump, and as to the origin, sponsorship, or
4 approval of Defendants' goods and services by Mr. Trump.

5 51. Defendants' unauthorized acts constitute direct infringement of
6 Mr. Trump's federal trademarks in violation of California common law.

7 52. Defendants' conduct is intentional, malicious, and wanton in that
8 Defendants infringed and continue to infringe Mr. Trump's federal trademarks with
9 full knowledge that Mr. Trump owns and has the exclusive right to use his federal
10 trademarks, and with the intention of causing a likelihood of confusion and mistake
11 and to deceive.

12 53. Mr. Trump has suffered, is suffering, and will continue to suffer
13 irreparable injury for which Mr. Trump has no adequate remedy at law. Mr. Trump
14 is therefore entitled to an immediate and permanent injunction against further
15 infringing conduct by Defendants.

16 54. On information and belief, Defendants have profited and are profiting
17 from such infringement and Mr. Trump has been and is being damaged by such
18 infringement. Mr. Trump is therefore entitled to recover damages from Defendants
19 in an amount to be proved at trial as a consequence of Defendants' infringing
20 activities.

21 55. Defendants' infringing conduct has been willful, wanton, and
22 malicious, and done with an intent to deceive. Mr. Trump is therefore entitled to an
23 award of his reasonable attorneys' fees and costs, profits, and treble his actual
24 damages, pursuant to 15 U.S.C. § 1117(a). Mr. Trump is also entitled to, among
25 other things, the cost of corrective advertising.
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COUNT VII – TRADEMARK DILUTION UNDER STATE LAW
(CALIFORNIA BUS. & PROF. CODE § 14330)

56. Plaintiff repeats and realleges every allegation contained in paragraphs 1 – 55 as though fully set forth herein.

57. Defendants' acts as alleged herein are likely to cause injury to Mr. Trump's business and reputation, and to dilute the distinctive quality of the TRUMP mark. On information and belief. Defendants knew and intended these acts to dilute the TRUMP mark, and to injure Mr. Trump's business and reputation. Defendants' acts constitute trademark dilution under California Business and Professions Code §§ 14330 and 14335, and California common law.

58. Absent injunctive relief, Mr. Trump has no means by which to control Defendants' dilution of Mr. Trump's mark. Mr. Trump is therefore entitled to injunctive relief prohibiting Defendants from continuing such acts of dilution and unfair competition.

COUNT VIII – FALSE ADVERTISING UNDER STATE LAW
(CALIFORNIA BUS. & PROF. CODE § 17500 ET SEQ.)

59. Plaintiff repeats and realleges every allegation contained in paragraphs 1 – 58 as though fully set forth herein.

60. Defendants' acts as alleged herein constitute the use of deceptive, untrue, and misleading advertising, of which Defendants knew or should have known, thereby impairing Mr. Trump's goodwill and otherwise adversely affecting Mr. Trump's business and reputation. These acts constitute false advertising under California Business and Professions Code § 17500 et seq. and California common law.

61. Absent injunctive relief, Mr. Trump has no means by which to control Defendants' deceptive, untrue, and misleading advertising. Mr. Trump is therefore

1 entitled to injunctive relief prohibiting Defendants from continuing such acts of
2 dilution and unfair competition.

3 62. Mr. Trump is also entitled to recover restitution in the form of
4 Defendants' profits, in an amount to be proved at trial, as a consequence of
5 Defendants' wrongful activities.

6 **COUNT IX – UNFAIR COMPETITION UNDER STATE LAW**
7 **(CALIFORNIA BUS. & PROF. CODE § 17200 ET SEQ.)**
8

9 63. Plaintiff repeats and realleges every allegation contained in paragraphs
10 1 – 62 as though fully set forth herein.

11 64. The TRUMP mark is wholly associated with Mr. Trump due to its
12 extensive use by him, and as such, Mr. Trump is deserving of having his mark
13 adequately protected with respect to the conduct of his business.

14 65. Defendants' wrongful conduct as alleged herein constitutes unfair
15 competition and unfair, unlawful, and fraudulent business practices.

16 66. Based on the wrongful, unlawful, fraudulent, and unfair acts described
17 herein, Defendants are in violation of California Business and Professions Code
18 § 17200 et seq.

19 67. Mr. Trump has suffered, is suffering, and will continue to suffer
20 irreparable harm and injury for which he has no adequate remedy at law.
21 Mr. Trump is therefore entitled to a permanent injunction against further unfair
22 conduct by Defendants.

23 68. Defendants have profited, and are profiting, from such unfair conduct.

24 69. Mr. Trump is therefore entitled to recover restitution in the form of
25 Defendants' profits, in an amount to be proved at trial, as a consequence of
26 Defendants' wrongful activities.
27
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COUNT X – VIOLATION OF RIGHT OF PUBLICITY
(N.Y. CIVIL RIGHTS STATUTE § 50 AND 51 AND CALIFORNIA
CIVIL CODE § 3344)

70. Plaintiff repeats and realleges every allegation contained in paragraphs 1 – 69 as though fully set forth herein.

71. Defendants' unauthorized use of Mr. Trump's name in connection with the promotion of their business constitutes a violation of Mr. Trump's right of publicity, in violation of N.Y. Civil Rights Statute §§ 50 and 51 and California Civil Code § 3344.

WHEREFORE, Mr. Trump respectfully prays for an Order to be entered against Defendants as follows:

A. Preliminarily and permanently restraining and enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice thereof, jointly and severally:

i. from using the name TRUMP on or in connection with any product or service or the promotion thereof; or any other false designation of origin or false description or representation or any other thing calculated or likely to cause confusion or mistake in the minds of the public or to deceive the public into the belief that Defendants' products or services originate with or are associated with Mr. Trump;

ii. from representing by any means whatsoever, directly or indirectly, that any products sold or services rendered by Defendants are associated with, sponsored by, and/or connected or affiliated with Mr. Trump, or from otherwise taking any action likely to cause confusion, mistake or deception on the part of purchasers as to the origin or sponsorship of Defendants' products or services;

1 iii. otherwise competing unfairly with Mr. Trump in any manner;

2 iv. using any words, names, styles, designs, titles, or marks that
3 create a likelihood of injury to the business reputation of Mr. Trump or a
4 likelihood of dilution of Mr. Trump's mark and the goodwill associated
5 therewith;

6 v. using any trade practices whatsoever including those complained
7 of herein, that tend to unfairly compete with or injure Mr. Trump's business
8 and goodwill pertaining thereto;

9 vi. continuing to perform in any manner whatsoever any of the acts
10 complained of in this complaint;

11 vii. from causing, engaging in or permitting others to do any of the
12 aforesaid acts.

13 B. Requiring Defendants to immediately take down the web site currently
14 accessible through the URL www.TrumpsBestCoffee.com, and recall from the trade
15 and all distribution channels any and all products, packaging, advertising and
16 promotional materials bearing the mark TRUMP;

17 C. Directing that the URL www.TrumpsBestCoffee.com be transferred to
18 Mr. Trump;

19 D. Directing Defendants to deliver up to this Court by a date which the
20 Court shall direct, for impounding, destruction or other disposition, all materials
21 bearing the infringing trademark and/or trade dress in the Defendants' possession,
22 custody or control, including, without limitation, all merchandise, transfer designs,
23 packaging, package inserts, labels, signs, prints, wrappers, receptacles, advertising
24 or other materials and the means for making or reproducing same, that violate the
25 provisions of Paragraph A above, or any portion thereof.

26 E. Directing Defendants to file with the Court and serve on counsel for
27 Mr. Trump within thirty (30) days after entry of any preliminary or permanent
28

1 injunction issued by the Court in this action, a sworn written statement as provided
2 in 15 U.S.C. § 1116 setting forth in detail the manner and form in which Defendants
3 have complied with the injunction.

4 F. Directing Defendants to account to Mr. Trump for all gains, profits, and
5 advantages derived from Defendants' wrongful acts above described.

6 G. Directing that Defendants pay Mr. Trump such damages as Mr. Trump
7 has sustained as a consequence of Defendants' wrongful acts complained of herein.

8 H. Directing that the aforesaid amounts be multiplied or otherwise
9 enhanced as authorized by law.

10 I. Awarding Mr. Trump on his state law claims, compensatory damages
11 in an amount to be determined at trial.

12 J. Awarding Mr. Trump punitive damages in such amount as may be
13 determined at trial.

14 K. Finding this to be an "exceptional case," because of the willful and
15 outrageous nature of these violations, and directing that Defendants pay Mr. Trump
16 the costs of this action and his reasonable attorneys' fees pursuant to 15 U.S.C.
17 § 1117.

18 L. Granting Mr. Trump such other and further relief as the Court may
19 deem just and proper.

20
21 DATED: January 18, 2007

JOSHUA J. POLLACK
PROSKAUER ROSE LLP

23 By: 
24 Joshua J. Pollack

25 Attorneys for Plaintiff
26 DONALD J. TRUMP

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

DATED: January 18, 2007

JOSHUA J. POLLACK
PROSKAUER ROSE LLP

By: Joshua J. Pollack
Joshua J. Pollack

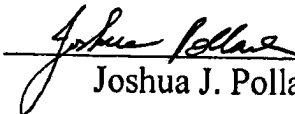
Attorneys for Plaintiff
DONALD J. TRUMP

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: January 18, 2007

JOSHUA J. POLLACK
PROSKAUER ROSE LLP

By: 
Joshua J. Pollack

Attorneys for Plaintiff
DONALD J. TRUMP